

ADDENDUM
DANIA BEACH CITY COMMISSION
REGULAR MEETING
TUESDAY, DECEMBER 13, 2011 – 7:00 P.M.

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE WITH REGARD TO ANY MATTER CONSIDERED AT THIS MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDING, AND FOR SUCH PURPOSE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

LOBBYIST REGISTRATION REQUIRED. REGISTRATION AS A LOBBYIST IN THE CITY OF DANIA BEACH IS REQUIRED IF ANY PERSON, FIRM OR CORPORATION IS BEING PAID TO LOBBY THE COMMISSION ON ANY PETITION OR ISSUE PURSUANT TO ORDINANCE # 01-93. REGISTRATION FORMS ARE AVAILABLE IN THE CITY CLERK'S OFFICE IN THE ADMINISTRATION CENTER.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY CLERK'S OFFICE, 100 W. DANIA BEACH BOULEVARD, DANIA BEACH, FL 33004, (954) 924-6800 EXTENSION 3624, AT LEAST 48 HOURS PRIOR TO THE MEETING.

IN CONSIDERATION OF OTHERS, WE ASK THAT YOU:

- A. PLEASE TURN CELL PHONES OFF, OR PLACE ON VIBRATE. IF YOU MUST MAKE A CALL, PLEASE STEP OUT INTO THE ATRIUM, IN ORDER NOT TO INTERRUPT THE MEETING.
 - B. IF YOU MUST SPEAK TO SOMEONE IN THE AUDIENCE, PLEASE SPEAK SOFTLY OR GO OUT INTO THE ATRIUM, IN ORDER NOT TO INTERRUPT THE MEETING.
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7. CONSENT AGENDA

7.11 RESOLUTION NO. 2011-157

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, RESCINDING THE TERMINATION OF THE DOWNTOWN DANIA BEACH DEVELOPMENT, LLC DEVELOPMENT AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH DOWNTOWN DANIA BEACH DEVELOPMENT, LLC; PROVIDING FOR CONFLICTS; FURTHER, PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, on November 24, 2009, Downtown Dania Beach Development, LLC (“Downtown”), the City of Dania Beach, Florida (the “City”), and the Dania Beach Community Redevelopment Agency (the “CRA”), entered into a Development Agreement (the “Development Agreement”) for the development of the City Center Project (the “Project”); and

WHEREAS, on February 10, 2011, Downtown, the City and the CRA entered into a First Amendment to Development Agreement (“First Amendment”); and

WHEREAS, the CRA and the City terminated the Development Agreement, pursuant to its terms effective November 23, 2011; and

WHEREAS, the CRA and the City now desire to rescind the termination of the First Amendment to the Development Agreement, and the CRA, the City and the Developer desire to reinstate the Development Agreement, pursuant to certain terms and conditions agreed upon; and

WHEREAS, the parties now find it necessary to further amend the Development Agreement to change certain terms, and, therefore, have negotiated a Second Amendment to Development Agreement, a copy of which is attached as Exhibit “A” (the “Second Amendment”), and it is made a part of and incorporated into this Resolution by this reference; and

WHEREAS, the City Commission finds that the rescission of the termination of the First Amendment to the Development Agreement, reinstatement of it, and the approval of the Second Amendment are in the City’s best interest;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct and they are incorporated into this Resolution by this reference.

Section 2. Effective upon the full execution and delivery of the Second Amendment to the Development Agreement by each of the parties, the termination of the First Amendment of the Development Agreement, as further modified by the terms and conditions of the Second Amendment, shall be rescinded.

Section 3. Effective upon the full execution and delivery of the Second Amendment by each of the parties, the First Amendment to the Development Agreement, as further modified by the terms and conditions of the Second Amendment, shall be reinstated.

Section 4. The Second Amendment to the Development Agreement for the development of the Project between the City, the CRA and Downtown together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 5. The City Manager and City Attorney are authorized to make minor revisions to the terms of any such agreements or documents as are deemed necessary and proper for the best interests of the City. The City officials are authorized to execute the Second Amendment to the Development Agreement.

Section 6. That all resolutions or parts of resolutions in conflict with this Resolution are repealed to the extent of such conflict.

Section 7. That this Resolution shall be in force and take effect immediately upon its passage and adoption.

PASSED AND ADOPTED on December 13, 2011.

ATTEST:

LOUISE STILSON, CMC
CITY CLERK

PATRICIA A. FLURY
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

THOMAS J. ANSBRO
CITY ATTORNEY

**SECOND AMENDMENT
TO
DEVELOPMENT AGREEMENT**

THIS AGREEMENT (hereinafter referred to as this “Second Amendment”) dated as of December _____, 2011, is entered into by and among the **DANIA BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic created pursuant to Part III of Chapter 163, Florida Statutes, having an address at 100 West Dania Beach Boulevard, Dania Beach, Florida 33004 (the “CRA”), the **CITY OF DANIA BEACH, FLORIDA**, a Florida municipal corporation, having an address at 100 West Dania Beach Boulevard, Dania Beach, Florida 33004 (the “City”), and **DOWNTOWN DANIA BEACH DEVELOPMENT, LLC**, a Florida limited liability company, having an address at 3001 W. Hallandale Beach Boulevard, Hallandale Beach, Florida 33009 (“Developer”).

R E C I T A L S

A. The CRA, the City and the Developer entered into that certain Development Agreement dated as of November 24, 2009 (the “Original Development Agreement”).

B. The CRA, the City and the Developer amended the Original Development Agreement through the First Amendment to Development Agreement dated as of February 10, 2011 (“First Amendment” and together with the Original Development Agreement, the “Development Agreement”) to provide for the development of the Entry Roadway Property.

C. The CRA and the City terminated the Development Agreement pursuant to its terms effective November 23, 2011.

D. The CRA and the City now desire to rescind the termination and the CRA, the City and the Developer desire to reinstate the Development Agreement pursuant to the terms and conditions of this Second Amendment.

E. As contemplated in the First Amendment, Broward County, Florida, has agreed to provide \$700,000.00 for the development of the Entry Roadway Property and the Developer has agreed to construct the Entry Roadway commencing no later than March 15, 2012 and completing the Entry Roadway by August 1, 2012.

F. The Developer has completed the construction of the Garage pursuant to the terms and conditions of the Development Agreement. However, the Developer has been unable to obtain the necessary financing to develop or construct the “Future Intended Improvements” (i.e., City Hall, a residential building, an office building, etc.) as further specified in the Development Agreement.

G. The CRA, the City and the Developer desire to terminate and release each other from the contractual obligations contained within the Development Agreement, if any, with regard to the development of the Future Intended Improvements, with the sole exception of the

obligations relating to the construction of the Entry Roadway as contained in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants described above and the agreements contained below, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein as if set forth in full.
2. Effective upon the full execution (the "Effective Date") and delivery of this Second Amendment by each of the parties herein, the CRA, the City and the Developer do hereby agree to reinstate the Development Agreement as further modified by the terms and conditions of this Second Amendment.
3. All defined terms in this Second Amendment shall have the same meaning as in the Development Agreement, except as otherwise noted.
4. Section 1.9 of the First Amendment to Development Agreement is hereby deleted in its entirety and the following is hereby inserted in its place and stead:

1.9 Entry Roadway. Developer is the owner of fee simple title to the real property described on Exhibit "8" attached to the First Amendment (the "Entry Roadway Property") and will convey the Entry Roadway Property to the City free and clear of all liens and encumbrances pursuant to a right of way deed in substantially the form attached hereto as Exhibit "A" (the "Right of Way Deed") on or before January 1, 2012. The design and construction of the roadway entrance feature described in Exhibit "9" attached to the Development Agreement as the entry roadway plans (the "Entry Roadway Plans") shall be completed by the Developer at the sole cost and expense of the CRA, which funds shall be reimbursed to the CRA/City from Broward County, Florida (the "County"). The cost for the completion of such Work shall not exceed the amount of \$700,000.00 to be reimbursed to the CRA/City by the County pursuant to the Seventh Amendment to Dania Beach Interlocal Agreement dated as of March 1, 2011.

1.9.1 The Developer shall design and construct the Entry Roadway as more particularly described in the Entry Roadway Plans. Construction of the Entry Roadway shall commence no later than March 15, 2012 and be completed by August 1, 2012.

1.9.2 The CRA shall pay the Developer for the Developer's performance of its obligations to dedicate the Property to the City, design and construct the Entry Roadway (pursuant to the payment procedures set forth within the Development Agreement, as amended) a guaranteed maximum price not to exceed Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) (the "GMP"). The GMP shall include the Contract Sum for the Design Services and the Construction Work for the Entry Roadway as set forth in Change Order – Three, dated May 23, 2011, attached hereto as Exhibit "B".

5. The following Sections of the Development Agreement are hereby deleted in their entirety:

- a) Section 1.7, entitled “**Hotel**”.
- b) Section 1.8, entitled “**Ground Lease of Phase 1 Leased Property; Office Building**”.
- c) Section 1.10, entitled “**Completion Payment**”.
- d) Section 1.11, entitled “**Further Development**”.
- e) Section 1.12, entitled “**Right of Way Improvements**”.

6. The City and the CRA intend to issue a Request for Qualifications (“RFQ”) to seek an experienced master developer to develop, *inter alia*, the Future Intended Improvements. The Developer owns other real property that the Developer intended to be developed as a hotel (“Hotel Property”). The City and the CRA agree to include a statement in the RFQ that the Developer, as the owner of the Hotel Property, has offered to sell the Hotel Property for \$1,865,000.00 to a successful proposer for its development within the Dania Beach City Center, and that the proposers may, but are not required to, include the Hotel Property as a part of their proposal, subject to acquiring the Hotel Property from the Developer. If the successful proposal includes the Hotel Property, then the City and the CRA acknowledge that automobile parking will be available in the adjacent parking garage to reasonably accommodate the previously proposed and approved hotel use and site plan. If the successful proposal does not include the Hotel Property, then the Developer shall not have the right to apply any of the parking spaces located in the parking garage toward its parking requirements with respect to the Hotel Property, but in that event, the City and the CRA agree that they will work cooperatively with the Developer to satisfy the parking requirements to accommodate City zoning regulations and a City/CRA approved use and site development plan for the Hotel Property.

7. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. Except as amended and modified by this Second Amendment, all of the terms, covenants, conditions, and agreements of the Development Agreement and the First Amendment shall remain in full force and effect. In the event of any conflict between the provisions of the Development Agreement, the First Amendment and the provisions of this Second Amendment, this Second Amendment shall control.

IN WITNESS WHEREOF, this Second Amendment is executed as of the date first above set forth:

DEVELOPER

DOWNTOWN DANIA BEACH DEVELOPMENT LLC,
a Florida limited liability company

By:_____

Name:_____

Title:_____

Address: _____

Dated: December ___, 2011

CITY:

**CITY OF DANIA BEACH,
a Florida municipal corporation**

By: _____
Robert Baldwin, City Manager

Dated: December ____, 2011

ATTEST:

By: _____
Louise Stilson, CMC, City Clerk

Approved as to form and legal sufficiency:

By: _____
Thomas J. Ansbrosio, City Attorney

CRA:

DANIA BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Patricia A. Flury, Chairperson

Dated: December ____, 2011

ATTEST:

By: _____
Louise Stilson, CMC, CRA Secretary

By: _____
Thomas J. Ansbrosio, City Attorney

EXHIBIT “A”

THE PROPERTY

INCLUDING

LEGAL DESCRIPTION

AND

RIGHT OF WAY DEED

EXHIBIT “B”

CHANGE ORDER – THREE,
DATED MAY 23, 2011